

ASSEMBLY BILL

No. 3

Introduced by Assembly Member Richman

April 14, 2005

An act to add Section 24201.5 to, and to add Part 15 (commencing with Section 29000) to Division 1 of Title 1 of, the Education Code, and to amend Sections 20133, 20814, 20816, 31453, 31453.5, 31592.2, 31720, 31723, 31724, 31727.4, 31729, 31730, and 31731 of, to add Sections 20695, 21150.5, 21352.5, 21403, 31481, and 31624 to, to add Part 3.6 (commencing with Section 21800) to Division 5 of Title 2 of, to add Part 9 (commencing with Section 22980) to Division 5 of Title 2 of, and to repeal Sections 20820 and 31592.4 of, the Government Code, and to add Section 4666 to the Labor Code, relating to retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3, as introduced, Richman. Public employees' retirement.

(1) Existing law governs retirement plans for public employees, including state employees, county employees, and school employees.

This bill would establish defined contribution plans and hybrid plans for public employees hired on and after July 1, 2007. These provisions would be operative only if a specified constitutional amendment is approved by the voters.

(2) Under existing law, retirement benefits for a member of the Defined Benefit Program of the State Teachers' Retirement Plan, a member of the Public Employees' Retirement System, or a member of a retirement system under the County Employees Retirement Law of 1937 are calculated according to one of a number of formulae, based on age, years of service, and compensation, in effect on the member's date of retirement.

This bill would provide that any amendment to any of those formulae shall apply only with respect to service performed by the member on and after the effective date of the amendment.

(3) Existing law requires the actuary of the Public Employees' Retirement System and of the retirement systems under the County Employees Retirement Law of 1937 to conduct periodic actuarial valuations of the assets and liabilities of the respective retirement systems for the purpose, among other things, of calculating employer contributions rates. Existing law also establishes employee contributions rates under those systems.

This bill would require those actuaries, when conducting those assets valuation, to spread market value asset gains and losses over a period of at least 5 years. The bill would also provide that annual employer and employee contributions shall be sufficient to pay the actuarial normal costs and payment for unfunded liability for the year, except under certain circumstances, and that those contributions shall be shared equally by the employer and employees, subject to a specified limit on increases to employee contributions.

(4) The Public Employees' Retirement Law and the County Employees Retirement Law of 1937 authorize excess or surplus assets, as specified, to be allocated in certain circumstances to reduce employee contributions or to pay for retiree health benefits.

The bill would eliminate that authorization.

(5) The Public Employees' Retirement Law prescribes industrial disability retirement benefits for members of the system. Under that law, the amount of the member's disability retirement benefit may be equal to his or her service retirement benefit if certain conditions exist.

This bill would provide, with respect to any member who retires on or after the effective date of these provisions, that the retirement allowance of a member retired for an industrial disability would be canceled if that member returned to the same or a similar job classification with any employer for more than 3 months. The bill would authorize a member to retire for industrial disability only if the board finds that the member's incapacity is due to a predominantly job-connected cause. The bill would also authorize the board to require that member to undergo a medical examination by a physician or surgeon appointed by the board to determine if the disability continues to exist if the member is under 59 years of age. The bill would also authorize that member to elect to retire for service and receive his or her service retirement allowance in lieu of receiving a

disability retirement allowance, but would prohibit a member from receiving both allowances.

The bill would require a reduction in workers' compensation benefits that are based on the impairments that gave rise to a disability retirement allowance, as specified.

(6) Existing law establishes various types of death benefits for the beneficiaries and survivors of public employees.

This bill would establish a death benefit payable upon the death of a sworn peace officer or sworn firefighter who is killed in the performance of his or her duty, employed by a public agency, and who was not a member of a defined benefit plan at the time of his or her death, as specified. The death benefit pursuant to those provisions would be \$1,000,000, payable to the beneficiary or survivors of that peace officer or firefighter in accordance with specified procedures. The bill would require a public agency, as defined, to pay the death benefit to a beneficiary or survivor within 30 days after receipt of all necessary information regarding entitlement to payment. The bill would also make a continuous appropriation from the General Fund for the purposes of making payments for death benefits pursuant to those provisions.

(7) Under existing law, a member of a retirement system under the County Employees Retirement Law of 1937 is eligible for a service-connected disability retirement if he or she is incapacitated as a result of injury or disease arising out of the member's employment.

This bill would authorize disability retirement pursuant to that provision only if the incapacity is a result of injury or disease arising predominantly out of and in the course of the member's employment.

(8) Existing law authorizes the board of retirement of a retirement system under the County Employees Retirement Law of 1937 to require an applicant for disability retirement to undergo a medical examination, as specified, to prove the existence of the disability. The board may also require any disability beneficiary under the age of 55 years to undergo a medical examination to determine whether the disability continues to exist. If the board finds the beneficiary is no longer incapacitated, his or her retirement allowance is canceled.

This bill would require an applicant for disability retirement to undergo a medical examination by a physician selected by the employer and would authorize the retirement board to require a medical examination of any disability beneficiary under the age of 59 years. The bill would also require the beneficiary's allowance to be

canceled if he or she is employed in the same or similar job classification with any employer for a period of more than 3 months.

(9) Under existing law, the disability retirement of a member of a retirement system under the County Employees Retirement Law of 1937 becomes effective upon the expiration of any leave of absence or sick leave to which he or she may be entitled. Upon retirement for service-connected disability, the member's retirement allowance is equal to either one-half of his or her final compensation or, if he or she is eligible for service retirement, his or her service retirement allowance if it is greater.

Under this bill, a member's disability retirement would be effective as of the date of his or her application for retirement. Upon retirement for service-connected disability, the member's retirement allowance would be equal to one-half of his or her final compensation. The bill would require a reduction in workers' compensation benefits that are based on the impairments that gave rise to a disability retirement, as specified. However, if the member were eligible for service retirement, the bill would authorize him or her to elect to be retired for service and receive his or her service retirement allowance.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 24201.5 is added to the Education
- 2 Code, to read:
- 3 24201.5. Any amendment to this part that becomes operative
- 4 on or after the effective date of this section and that modifies the
- 5 formula, or enacts a new formula, for the calculation of the
- 6 retirement allowance for a member shall apply only with respect
- 7 to service performed by the member on and after the operative
- 8 date of the amendment.
- 9 SEC. 2. Part 15 (commencing with Section 29000) is added
- 10 to Division 1 of Title 1 of the Education Code, to read:

PART 15. DEFINED CONTRIBUTION AND HYBRID
PLANS

29000. (a) The “defined contribution plan” and “hybrid plan” have the same meaning as set forth in Section 8 of Article XX of the California Constitution.

(b) The defined contribution plan and the hybrid plan are hereby established for all classes of employees who are first hired to perform creditable service, as defined in Section 22119.5, on or after July 1, 2007, and for members and participants of the Defined Benefit Program and the Cash Balance Benefit Program of the State Teachers’ Retirement Plan who have not yet retired and who elect to participate. Except as provided in subdivision (a) of Section 29003, each eligible employee shall elect whether to participate in the defined contribution plan or the hybrid plan.

29001. The management and control of these plans are vested in the board and the board may make those rules it deems proper.

29002. The defined contribution plan shall comply with all of the following guidelines:

(a) The employer contribution shall not exceed the employee contribution by an amount that is greater than 100 percent of the employee contribution.

(b) In no event shall the combined employer and employee contributions be less than the minimum contribution amount required under federal law (26 U.S.C. Sec. 3121(b)(7)(F)).

(c) The employee and employer contributions shall be invested in a fund designed to provide suitable risks and returns based on the employee’s normal retirement date unless the employee makes another selection of suitable retirement investment options offered by the board.

(d) For temporary and part-time employees, the employer’s contributions shall be vested in an amount of 25 percent for the first and second years, 50 percent for the third year, and fully vested thereafter.

(e) The maximum employee contribution shall be established by federal law.

29003. The hybrid plan shall comply with all of the following guidelines:

1 (a) Only permanent, full-time employees shall be eligible to
2 participate in the plan. Every permanent, full-time employee
3 shall participate in the hybrid plan unless he or she elects to
4 enroll in the defined contribution plan.

5 (b) Any amendment to the plan that modifies the formula, or
6 enacts a new formula, for the calculation of the retirement
7 allowance for a member shall only apply with respect to service
8 performed by the member on and after the operative date of the
9 amendment.

10 (c) For purposes of evaluating the actuarial value of plan
11 assets, market value asset gains and losses shall be spread over a
12 period of at least five years.

13 29004. This part shall not become operative unless Assembly
14 Constitutional Amendment No. ____ of the 2005-06 First
15 Extraordinary Session is approved by the voters and becomes
16 operative.

17 SEC. 3. Section 20133 of the Government Code is amended
18 to read:

19 20133. As of June 30, 1991, and thereafter at the end of
20 periods not to exceed four years, the actuary shall make an
21 actuarial investigation into the mortality, service, and
22 compensation experience of members and persons receiving
23 benefits and an actuarial valuation of the assets and liabilities of
24 this system. From time to time, the actuary shall determine the
25 rate of interest being earned on the retirement fund after
26 deducting from earnings amounts applied to costs of
27 administration of this system. *When conducting the actuarial*
28 *valuation of the assets, the actuary shall spread market value*
29 *asset gains and losses over a period of at least five years.*

30 SEC. 4. Section 20695 is added to the Government Code, to
31 read:

32 20695. Notwithstanding any other provision of this chapter,
33 on and after the effective date of this section, or upon the later
34 expiration of labor agreements entered into prior to January 1,
35 2005, the member contribution rate for members of the system
36 shall be calculated according to all of the following:

37 (a) For each category or group of members, the contribution
38 rate shall be equal to one-half of the actuarial normal cost and
39 one-half of any payments for unfunded liabilities for their
40 respective member category or group, reflected as a percentage

1 of salary, as determined by the actuary pursuant to Section
2 20814.

3 (b) In any fiscal year in which the actuarial value of the
4 employer's assets exceeds the accrued actuarial liability by 25
5 percent or more, the member contribution rate shall be 45 percent
6 of the actuarial normal cost for the respective member category
7 or group, reflected as a percentage of salary.

8 (c) In no event shall the contribution rate for any member
9 category or group increase by more than 2 percent of salary in
10 any year.

11 SEC. 5. Section 20814 of the Government Code is amended
12 to read:

13 20814. (a) Notwithstanding any other provision of law, the
14 state's contribution under this chapter shall be adjusted from time
15 to time in the annual Budget Act according to the following
16 method. As part of the proposed budget submitted pursuant to
17 Section 12 of Article IV of the California Constitution, the
18 Governor shall include the contribution rates submitted by the
19 actuary of the liability for benefits on account of employees of
20 the state. The Legislature shall adopt the actuary's contribution
21 rates and authorize the appropriation in the Budget Act.

22 (b) The employer contribution rates for all other public
23 employers under this system shall be determined on an annual
24 basis by the actuary and shall be effective on the July 1 following
25 notice of a change in rate.

26 (c) *The employer contribution rates for employers under this*
27 *system shall be sufficient to pay the full actuarial normal cost*
28 *and any payments for unfunded liabilities for the employer's*
29 *respective member categories, less member contributions*
30 *pursuant to Section 20695, reflected as a percentage of salary.*
31 *However, in any fiscal year in which the actuarial value of an*
32 *employer's assets exceeds the accrued actuarial liability by 25*
33 *percent or more, the employer contribution rate shall be reduced,*
34 *during that fiscal year, to 45 percent of the actuarial normal*
35 *cost, reflected as a percentage of salary.*

36 SEC. 6. Section 20816 of the Government Code is amended
37 to read:

38 20816. ~~(a)~~ Notwithstanding any other provision of this part,
39 all assets of an employer shall be used in the determination of the
40 employer contribution rate for the membership comprising the

1 basis of the computation. Assets held shall be recognized over
2 the same funding period used to amortize unfunded accrued
3 actuarial obligations, whether in excess of the accrued actuarial
4 obligation or not, using the entry age normal funding method.

5 ~~(b) On and after January 1, 1999, contracting agencies for~~
6 ~~which the actuarial value of assets exceeds the present value of~~
7 ~~benefits as of the most recently completed valuation, as~~
8 ~~determined by the chief actuary, may request that the board~~
9 ~~transfer employer assets to member-accumulated contribution~~
10 ~~accounts to satisfy all or a portion of the member contributions~~
11 ~~required by this part. That transfer shall be over a 12-month~~
12 ~~period provided the actuarial value of assets exceeds the present~~
13 ~~value of benefits. In determining the present value of benefits and~~
14 ~~the actuarial value of assets for purposes of this part, liabilities~~
15 ~~and assets attributed to the 1959 survivor allowance may not be~~
16 ~~included. On and after January 1, 2003, a transfer of assets may~~
17 ~~not be made pursuant to this subdivision unless all or the same~~
18 ~~portion of the member contributions of each member in a~~
19 ~~membership classification are satisfied through the transfer. An~~
20 ~~employer electing a transfer of assets pursuant to this subdivision~~
21 ~~shall satisfy the members' contributions for a period of not less~~
22 ~~than one month and not more than one year.~~

23 ~~(c) On and after January 1, 2002, any contracting agency for~~
24 ~~which the actuarial value of assets exceeds the present value of~~
25 ~~benefits as of the most recently completed valuation, as~~
26 ~~determined by the chief actuary, may request that the board~~
27 ~~transfer from the contracting agency's employer account excess~~
28 ~~assets, as determined by the board subject to the requirements~~
29 ~~and limitations of Section 420 of the Internal Revenue Code (26~~
30 ~~U.S.C. Sec. 420), to a retiree health account established by the~~
31 ~~board, in its discretion, in the contracting agency's employer~~
32 ~~account pursuant to Section 401(h) of the Internal Revenue Code~~
33 ~~(26 U.S.C. 401(h)) for the purpose of providing health benefits to~~
34 ~~the contracting agency's retirees and their covered dependents.~~
35 ~~The board may, in its discretion, transfer excess assets from the~~
36 ~~contracting agency's employer account to that contracting~~
37 ~~agency's retiree health account within that agency's employer~~
38 ~~account, if the transfer meets the conditions of a qualified~~
39 ~~transfer pursuant to Section 420 of the Internal Revenue Code~~
40 ~~(26 U.S.C. Sec. 420). The transferred assets shall be used solely~~

1 for the payment of current retiree health liabilities. That qualified
2 transfer shall be made only once each year. The board may adopt
3 regulations necessary to implement this subdivision.
4 Notwithstanding any other provision of law, the regulations may
5 provide for the nonforfeiture of accrued pension benefits of
6 participants and beneficiaries of a plan from which excess assets
7 are transferred to the extent necessary for the transfer to meet the
8 conditions of a qualified transfer pursuant to Section 420 of the
9 Internal Revenue Code (26 U.S.C. Sec. 420), and may include
10 any other provision necessary under Section 420 of the Internal
11 Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of the
12 Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the
13 purposes of this subdivision.

14 (d) For the purpose of this section, “employer” means any
15 contracting agency, the state, or a school employer.

16 (e) The actuarial report in the annual financial report shall also
17 express the effect upon employer contribution rates of this
18 section and of the recognition of net unrealized gains and losses.

19 SEC. 7. Section 20820 of the Government Code is repealed.

20 20820. Notwithstanding Section 20816, surplus funds
21 credited to the patrol member category shall be used to reduce
22 the state employer contribution to this system. Surplus funds in
23 the patrol member category may also be used to reduce the
24 member contributions required by Section 20681, under the
25 terms of a memorandum of understanding reached pursuant to
26 Section 3517.5.

27 SEC. 8. Section 21150.5 is added to the Government Code, to
28 read:

29 21150.5. (a) Notwithstanding any other provision of law, the
30 following requirements shall apply to any member who retires
31 for an industrial disability pursuant to this part:

32 (1) The retirement allowance of a member retired for an
33 industrial disability shall be canceled if that member returns to
34 the same or a similar job classification with any employer for
35 more than three months.

36 (2) A member may not receive industrial disability retirement
37 benefits unless a physician selected by the employer has
38 conducted a medical examination of the member and the results
39 of that examination have been submitted to the board. Section
40 21155 shall apply to that examination.

1 (3) A member shall be entitled to industrial disability
2 retirement only if the board finds that the member's incapacity is
3 due to a predominately job-connected cause.

4 (4) Notwithstanding Sections 21164 and 21165, the effective
5 date of the disability retirement shall be the date of the
6 application for retirement, regardless of any leave balances or
7 participation by the member in a rehabilitation program.

8 (5) The board may require any member under the age of 59
9 years and receiving a disability retirement allowance to undergo
10 a medical examination by a physician or surgeon appointed by
11 the board to determine if the disability continues to exist.

12 (b) This section shall only apply to persons who retire for
13 industrial disability on or after the effective date of this section.

14 SEC. 9. Section 21352.5 is added to the Government Code, to
15 read:

16 21352.5. Any amendment to this part that becomes operative
17 on or after the effective date of this section and that modifies the
18 formula, or enacts a new formula, for the calculation of the
19 pension for a member shall apply only with respect to service
20 performed by the member on and after the operative date of the
21 amendment.

22 SEC. 10. Section 21403 is added to the Government Code, to
23 read:

24 21403. (a) Any benefits paid or payable under a workers'
25 compensation program shall be reduced by an amount equal to
26 the disability retirement allowance for the same impairment or
27 impairments that qualified the member for workers'
28 compensation.

29 (b) Notwithstanding any other provision of this article, if a
30 member is qualified for service retirement, he or she may elect to
31 retire for service and receive his or her service retirement
32 allowance in lieu of receiving a disability retirement allowance
33 under this article. A member may not receive both a disability
34 retirement allowance and a service retirement allowance.

35 (c) This section shall only apply to persons who retire or are
36 eligible to retire for industrial disability on or after the effective
37 date of this section.

38 SEC. 11. Part 3.6 (commencing with Section 21800) is added
39 to Division 5 of Title 2 of the Government Code, to read:

PART 3.6. DEATH BENEFITS

21800. (a) Notwithstanding any other provision of law, a death benefit is payable pursuant to this part if the deceased was a sworn peace officer or sworn firefighter, killed in the performance of his or her duty, who was employed by a public agency and was not covered by a defined benefit plan of the public agency at the time of his or her death.

(b) The death benefit payable pursuant to this section shall be one million dollars (\$1,000,000).

(c) The death benefit shall be paid as provided in this part to the beneficiary designated by the peace officer or firefighter, or if there is no valid beneficiary designation, to the survivors of the peace officer or firefighter.

(d) Any death benefit payable shall be deposited into an account held by the Public Employees' Retirement System. The Public Employees' Retirement System shall pay to the beneficiary or survivor the interest on the funds in the account at a rate equal to its own actuarial assumption for return on investment for that year. The beneficiary or survivor may withdraw up to five hundred thousand dollars (\$500,000) of principal from the account. Any money in the account at the time of the death of the beneficiary or survivor shall be distributed to his or her estate.

21801. As used in this part, the following terms apply:

(a) "Beneficiary" means a person designated by the peace officer or firefighter as a beneficiary to receive the death benefit as may be payable to his or her beneficiary or estate under this part, by a writing filed with the public agency that employed the peace officer or firefighter.

(b) "Defined benefit plan" means a system providing a pension benefit determined by a formula based on age, service credit, and salary.

(c) "Killed in the performance of his or her duty" means death that results directly from the peace officer or firefighter's official work duties.

(d) "Public agency" includes, but is not limited to, the State of California, and any city, city and county, or county, including a charter city or charter county, district, school district, University of California, California State University, or other political

1 subdivision or public entity of, or organized under the laws of
2 this state, or any department, instrumentality, or agency thereof.

3 (e) “Survivor” means a person that may be entitled to receive
4 a death benefit pursuant to this part upon the peace officer or
5 firefighter’s death, where the peace officer or firefighter has no
6 valid beneficiary designation in effect on the date of death.

7 21802. (a) Except as provided in subdivision (b), a sworn
8 peace officer or firefighter may designate a beneficiary to receive
9 the death benefit as may be payable to his or her beneficiary or
10 his or her survivors under this part, by a writing filed with the
11 public agency.

12 (b) (1) No designation may be made in derogation of the
13 community property share of any spouse if any benefit is derived,
14 in whole or in part, from community property contributions or
15 service credited during the period of marriage, unless the spouse
16 has previously obtained an alternative order for division pursuant
17 to Section 2610 of the Family Code.

18 (2) No designation may be made by an unmarried peace
19 officer or firefighter if that designation is in derogation of the
20 rights of the peace officer or firefighter’s unmarried, dependent
21 children who are under 18 years of age at the time of the peace
22 officer or firefighter’s death.

23 (c) The designation may be by class, in which case the
24 members of the class at the time of the deceased’s death shall be
25 entitled as beneficiaries. The designation shall also be subject to
26 the public agency’s conclusive determination, upon evidence
27 satisfactory to it, of the existence, identity, or other facts relating
28 to entitlement of any person designated as beneficiary, and
29 payment made pursuant to this part in reliance on any
30 determination made in good faith, notwithstanding that it may
31 not have discovered a beneficiary otherwise entitled to share in
32 the benefit, shall constitute a complete discharge and release of
33 the public agency for further liability for the benefit.

34 (d) A designation of beneficiary under this part is revocable at
35 the pleasure of the peace officer or firefighter who made it.
36 Dissolution of marriage, annulment of marriage, the birth of a
37 child, or the adoption of a child shall constitute an automatic
38 revocation of a peace officer or firefighter’s previous revocable
39 designation of beneficiary. A peace officer or firefighter’s
40 termination of employment shall constitute an automatic

1 revocation of the previous revocable designation of beneficiary
2 and subsequent reemployment in employment covered by this
3 part shall not reinstate the previous designation of beneficiary.

4 (e) Upon revocation of any beneficiary designation, a peace
5 officer or firefighter may designate the same or another
6 beneficiary by a writing filed with the public agency, except as
7 otherwise provided in this section.

8 21803. (a) If a person has no beneficiary designation in
9 effect on the date of death, any benefit payable shall be paid to
10 the survivors of the person in the following order:

11 (1) The decedent's spouse.

12 (2) The decedent's natural or adopted children, including a
13 natural child adopted by another who meets both of the following
14 criteria:

15 (A) The natural parent and adopted child lived together at any
16 time as parent and child or the natural parent was married to or
17 was cohabiting with the other natural parent at the time the child
18 was conceived and died before the birth of the child.

19 (B) The child was adopted by the spouse of either of the
20 natural parents or after the death of either of the natural parents
21 or the child is a natural child adopted by another as that phrase is
22 defined or construed by the Probate Code.

23 (3) The decedent's parents.

24 (4) The decedent's brothers and sisters.

25 (b) If a deceased person had no effective beneficiary
26 designation and there are no survivors in the groups specified in
27 subdivision (a) who are entitled to the benefit under this part, the
28 benefit shall be paid to the estate of the decedent, if the estate is
29 either probated or subject to probate. Any benefit payable
30 pursuant to this part may be paid either to the estate or to the duly
31 authorized representative or representatives of the estate upon
32 receipt by public agency employer of the deceased person of a
33 court order appointing an executor, administrator, or personal
34 representative.

35 (c) If there are no survivors in the groups specified in
36 subdivision (a) and the estate of the person described in
37 subdivision (b) does not require probate, irrespective of whether
38 probate is filed, the benefit shall be paid directly to the
39 decedent's trust.

(d) If there are no survivors in the groups specified in subdivision (a) and the estate of the person described in subdivision (b) does not require probate, irrespective of whether probate is filed, and the decedent has not established a trust as described by subdivision (c), the benefit shall be paid directly to the surviving next of kin in the following order.

(1) Stepchildren.

(2) Grandchildren, including stepgrandchildren.

(3) Nieces and nephews.

(4) Great grandchildren.

(5) Cousins.

(e) For purposes of determining the application of subdivisions (b), (c), and (d), the amount of the benefit payable from this part shall not be included in calculating the worth of the estate.

(f) For purposes of this section, the term “stepchild” shall mean a person who had a regular parent-child relationship with the deceased person.

21804. (a) If, upon the death of a person there is a valid beneficiary designation on file with the public agency naming the decedent’s estate as beneficiary, and the estate will be probated, benefits shall be paid to the estate or to the duly authorized representative or representatives of the estate upon receipt by the public agency of a court order appointing an executor, administrator, or personal representative.

(b) If the deceased person had a will, but the estate does not require probate, benefits may, in the judgment of the public agency, be paid to the beneficiary or beneficiaries, as specified in the will, notwithstanding any other provision of law.

(c) If the deceased person left no will but had a trust, but the estate does not require probate, benefits may, in the judgment of the public agency, be paid to the successor trustee as named in the trust.

(d) If the deceased person left no will or trust and the estate does not require probate, but the decedent designated his or her estate as the beneficiary, the benefit shall be paid to the next of kin pursuant to Section 21802.

21805. (a) Payment of any benefit shall not be made to those persons covered by Section 21802 if there are eligible recipients who are living members of a higher ranking class of beneficiaries as set forth in that section.

1 (b) Death benefit payments made pursuant to this part, upon
2 the public agency's good faith determination of entitlement based
3 on satisfactory evidence of entitlement, shall constitute a
4 complete discharge and release of the public agency from
5 liability for those payments.

6 (c) The public agency's good faith determination of
7 entitlement to payment shall be based upon evidence such as a
8 death certificate, marriage certificate, or birth certificate for
9 persons in a higher ranking group of statutory beneficiaries.
10 However, if evidence is not available, the public agency may
11 accept a sworn statement by one claiming to be a beneficiary that
12 there are no living individuals in any of the higher ranking group
13 of statutory beneficiaries, that the estate does not require probate,
14 or that the relationship of the claimant to the decedent is as
15 claimed.

16 (d) Payment shall be made to a beneficiary or survivor within
17 30 days after receipt of the public agency of all necessary
18 information regarding entitlement to payment.

19 21806. There is hereby continuously appropriated without
20 regard to fiscal years, from the General Fund in the State
21 Treasury to the Public Employees' Retirement System for the
22 purpose of making payments required by this part, an amount
23 equal to the sum necessary to pay out all obligations for death
24 benefits incurred by each public agency.

25 SEC. 12. Part 9 (commencing with Section 22980) is added
26 to Division 5 of Title 2 of the Government Code, to read:

27
28 **PART 9. DEFINED CONTRIBUTION AND HYBRID PLANS**
29

30 22980. (a) "Defined contribution plan," "hybrid plan," and
31 "public agencies" have the same meaning as set forth in Section
32 8 of Article XX of the California Constitution.

33 (b) The defined contribution plan and the hybrid plan are
34 hereby established for all employees of public agencies,
35 excluding those employees subject to coverage under the
36 Teachers' Retirement System or the University of California
37 Retirement System who are first hired by the public agency on or
38 after July 1, 2007, and for current and former employees of
39 public agencies, excluding those employees subject to coverage
40 under the Teachers' Retirement System or the University of

1 California Retirement System, who are members of their
2 agency's defined benefit plan, who have not yet retired, and who
3 elect to participate. Except as provided in subdivision (a) of
4 Section 22983, each eligible employee shall participate in the
5 hybrid plan unless he or she elects to participate in the defined
6 contribution plan.

7 22981. (a) The management and control of the plans is
8 vested in the board and the board may make those rules it deems
9 proper.

10 (b) Notwithstanding subdivision (a), local government
11 agencies and special districts may employ private fund managers
12 to administer their defined contribution plans if the
13 administrative fees and costs are lower than those imposed by the
14 board.

15 22982. The defined contribution plan shall comply with all of
16 the following guidelines:

17 (a) The employer contribution shall not exceed the employee
18 contribution by an amount that is greater than 100 percent of the
19 employee contribution.

20 (b) In no event shall the employer and employee combined
21 contributions be less than the minimum contribution amount
22 required under federal law (26 U.S.C. Sec. 3121(b)(7)(F)).

23 (c) The employee and employer contributions shall be invested
24 in a fund designed to provide suitable risks and returns based on
25 the employee's normal retirement date unless the employee
26 makes another selection of suitable retirement investment options
27 offered by the board or the fund manager.

28 (d) For temporary and part-time employees, the employer's
29 contributions shall be vested in an amount of 25 percent for the
30 first and second years, 50 percent for the third year, and fully
31 vested thereafter.

32 (e) The maximum employee contribution shall be established
33 by federal law.

34 22983. The hybrid plan shall comply with all of the following
35 guidelines:

36 (a) Only permanent, full-time employees shall be eligible to
37 elect to participate in the plan.

38 (b) An amendment to the plan that modifies the formula, or
39 enacts a new formula, for the calculation of the retirement
40 allowance of a member shall only apply with respect to service

1 performed by the member on and after the operative date of the
2 amendment.

3 (c) For purposes of evaluating the actuarial value of plan
4 assets, market value asset gains and losses shall be spread over a
5 period of at least five years.

6 22984. This part shall not become operative unless Assembly
7 Constitutional Amendment No. ____ of the 2005-06 First
8 Extraordinary Session is approved by the voters and becomes
9 operative.

10 SEC. 13. Section 31453 of the Government Code is amended
11 to read:

12 31453. An actuarial valuation shall be made within one year
13 after the date on which any system established under this chapter
14 becomes effective, and thereafter at intervals not to exceed three
15 years. The valuation shall be conducted under the supervision of
16 an actuary and shall cover the mortality, service, and
17 compensation experience of the members and beneficiaries, and
18 shall evaluate the assets and liabilities of the retirement fund.
19 *When conducting the evaluation of the assets, the actuary shall*
20 *spread market value asset gains and losses over a period of at*
21 *least five years.* Upon the basis of the investigation, valuation,
22 and recommendation of the actuary, the board shall, at least 45
23 days prior to the beginning of the succeeding fiscal year,
24 recommend to the board of supervisors such changes in the rates
25 of interest, in the rates of contributions of members, and in
26 county and district appropriations as are necessary. With respect
27 to the rates of interest to be credited to members and to the
28 county or district, the board may, in its sound discretion,
29 recommend a rate ~~which~~ *that* is higher or lower than the interest
30 assumption rate established by the actuarial survey. No
31 adjustment shall be included in the new rates for time prior to the
32 effective date of the revision.

33 SEC. 14. Section 31453.5 of the Government Code is
34 amended to read:

35 31453.5. Notwithstanding Section 31587, and in accordance
36 with Section 31453 or 31510.1, the board ~~may~~ *shall* determine
37 county or district contributions on the basis of a normal
38 contribution rate ~~which that~~ shall be ~~computed as a level~~
39 ~~percentage of compensation which, when applied to the future~~
40 ~~compensation of the average new member entering the system,~~

~~together with the required member contributions, will be sufficient to provide for the payment of all prospective benefits of such member. The portion of based on the full actuarial normal cost and any payments for unfunded liabilities for the county or district's respective member categories, less member contributions pursuant to Section 31624, reflected as a percentage of salary. However, in any fiscal year in which the actuarial value of the county or district's assets exceeds the accrued actuarial liability by 25 percent or more, the employer contribution rate shall be reduced, during that fiscal year, to 45 percent of the actuarial normal cost, reflected as a percentage of salary. Any unfunded liability not provided by the normal contribution rate shall be amortized over a period not to exceed 30 years.~~

SEC. 15. Section 31481 is added to the Government Code, to read:

31481. Any amendment to this chapter that modifies the formula for the calculation of the pension for a member shall apply only with respect to service performed by the member on and after the effective date of the amendment.

SEC. 16. Section 31592.2 of the Government Code is amended to read:

31592.2. In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, ~~except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.~~

~~Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves.~~

SEC. 17. Section 31592.4 of the Government Code is repealed.

~~31592.4. (a) Notwithstanding Article 5.5 (commencing with Section 31610) and Article 8.6 (commencing with Section 31694), the amount of excess earnings available at the end of a fiscal year of the retirement fund, shall, subject to the limitations in this section, be treated in the immediately succeeding fiscal year, for all purposes under this chapter, as appropriations, transfers, and contributions made to the retirement fund by the county and districts. That treatment shall be solely for the purposes of meeting the applicable requirements of Section 401 of the Internal Revenue Code of the United States. That treatment shall also occur only to the extent that, in the immediately succeeding fiscal year, the county and districts pay for, or otherwise make reimbursement of, health benefits for members heretofore or hereafter retired and their dependents. For purposes of this section, "excess earnings" means earnings of the retirement fund at the end of any fiscal year that exceed the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board of supervisors and the board of retirement may take any actions otherwise authorized by law, necessary to ensure that the program provided by this section complies with all applicable federal and state income tax laws.~~

~~(b) This section shall not be operative in any county until the board of supervisors and the board of retirement of the county, by resolution adopted by a majority vote of each board, make this section operative in the county.~~

~~(c) Nothing in this section is intended to, or should be construed to, affect the validity of any agreement entered into by a county and a retirement association whereby a county has agreed to provide and fund a health insurance program for retired employees and their dependents for hospital services, medical services, dental services, and optical services, prior to the effective date of this section.~~

~~(d) In any county in which this section becomes operative, the payments provided pursuant to this section shall be in lieu of any similar payments which could be made pursuant to Section 31592.2 and no payments shall be made pursuant to Section 31592.2 for all, or a portion, of the premiums, dues, or other~~

1 ~~charges for health benefits for retired employees and their~~
2 ~~dependents.~~

3 SEC. 18. Section 31624 is added to the Government Code, to
4 read:

5 31624. Notwithstanding any other provision of this article, on
6 and after the effective date of this section, or upon the later
7 expiration of labor agreements entered into prior to January 1,
8 2005, the member contribution rate for members of the system
9 shall be calculated according to all of the following:

10 (a) For each category or group of members, the contribution
11 rate shall be equal to one-half of the actuarial normal cost and
12 one-half of any payments for unfunded liabilities for their
13 respective member category or group, reflected as a percentage
14 of salary, as determined by the actuary pursuant to Section
15 31453.

16 (b) In any fiscal year in which the actuarial value of the
17 county's assets exceeds the accrued actuarial liability by 25
18 percent or more, the member contribution rate shall be 45 percent
19 of the actuarial normal cost for the respective member category
20 or group, reflected as a percentage of salary.

21 (c) In no event shall the contribution rate for any member
22 category or group increase by more than 2 percent of salary in
23 any year.

24 SEC. 19. Section 31720 of the Government Code is amended
25 to read:

26 31720. Any member permanently incapacitated for the
27 performance of duty shall be retired for disability regardless of
28 age if, and only if:

29 (a) The member's incapacity is a result of injury or disease
30 arising *predominantly* out of and in the course of the member's
31 employment, and ~~such~~ *that* employment contributes substantially
32 to ~~such~~ *that* incapacity, or

33 (b) The member has completed five years of service, and

34 (c) The member has not waived retirement in respect to the
35 particular incapacity or aggravation thereof as provided by
36 Section 31009.

37 The amendments to this section enacted during the 1979–80
38 Regular Session of the Legislature shall be applicable to all
39 applicants for disability retirement on or after the effective date
40 of such amendments.

SEC. 20. Section 31723 of the Government Code is amended to read:

31723. The board ~~may~~ *shall* require ~~such~~ proof, including a medical examination at the expense of the member *and performed by a physician selected by the employer, as it deems necessary* or and the board upon its own motion may order a medical examination, to determine the existence of the disability.

SEC. 21. Section 31724 of the Government Code is amended to read:

31724. If the proof received, including ~~any~~ *the* medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his *or her* duties in the service, it shall retire him ~~effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such leave of absence with compensation~~ *or her*. His *or her* disability retirement allowance shall be effective as of the date ~~such~~ *the* application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. ~~Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date.~~

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, ~~such~~ *that* date will be deemed to be the date the application was filed.

SEC. 22. Section 31727.4 of the Government Code is amended to read:

31727.4. ~~Upon~~ *(a) Except as provided in subdivision (b), upon* retirement of any member for service-connected disability, he *or she* shall receive an annual retirement allowance payable in monthly installments, equal to one-half of his *or her* final

1 compensation. Notwithstanding any other provisions of this
2 chapter, any member upon retirement for service-connected
3 disability shall receive a current service pension or a current
4 service pension combined with a prior service pension purchased
5 by the contributions of the county or district sufficient which
6 when added to the service retirement annuity will equal one-half
7 of his final compensation, ~~or, if~~.

8 *(b) If the member is qualified for a service retirement, he shall*
9 *or she may elect to be retired for service and receive his or her*
10 *service retirement allowance if such allowance is greater but in*
11 *no event shall it that allowance exceed the limitation as set forth*
12 *in Section 31676.1 as it now reads or may hereafter be amended*
13 *to read. The*

14 *(c) Any benefits paid or payable under a workers'*
15 *compensation program shall be reduced by an amount payable*
16 *pursuant to subdivision (a) for the same impairment or*
17 *impairments that qualify the member for workers' compensation.*

18 *(d) The provisions of this section shall also apply to any*
19 *employee who becomes disabled for service-connected causes*
20 *prior to the first day of the calendar month when he or she would*
21 *normally become a member.*

22 *(e) The amendments to this section made by an act enacted*
23 *during the 2005-06 First Extraordinary Session shall apply only*
24 *to persons who retire on or after the effective date of that act.*

25 SEC. 23. Section 31729 of the Government Code is amended
26 to read:

27 31729. The board may require any disability beneficiary
28 under ~~the age-55~~ of 59 years to undergo medical examination.
29 The examination shall be made by a physician or surgeon
30 appointed by the board at the place of residence of the
31 beneficiary or other place mutually agreed upon. Upon the basis
32 of the examination, the board shall determine whether the
33 disability beneficiary is still physically or mentally incapacitated
34 for service in the office or department of the county or district
35 where he *or she* was employed and in the position held by him *or*
36 *her* when retired for disability.

37 *The amendments to this section made by an act enacted during*
38 *the 2005-06 First Extraordinary Session shall apply only to*
39 *persons who retire on or after the effective date of that act.*

SEC. 24. Section 31730 of the Government Code is amended to read:

31730. (a) If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.

(b) *If the beneficiary returns to employment in the same or similar job classification with any employer for a period of more than three months, his or her retirement allowance shall be canceled and, if applicable, he or she shall be reinstated in the county service pursuant to regulations of the county or district for reemployment of personnel. This subdivision shall apply only to persons who retire on or after the effective date of the act adding this subdivision.*

SEC. 25. Section 31731 of the Government Code is amended to read:

31731. If any disability beneficiary under *the age-55 of 59* years refuses to submit to medical examination, his or her pension shall be discontinued until his or her withdrawal of ~~such~~ that refusal, and if his or her refusal continues for one year, his or her retirement allowance shall be canceled.

The amendments to this section made by an act enacted during the 2005-06 First Extraordinary Session shall apply only to persons who retire on or after the effective date of that act.

SEC. 26. Section 4666 is added to the Labor Code, to read:

4666. The amount of temporary disability benefits, permanent disability benefits, and lifetime pension benefits that a retired public employee may receive under this division shall be limited in accordance with Section 21403 or 31727.4 of the Government Code.